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SEP 15 2008

OFFICE OF PETITIONS

In re Application of	:	
Keith G. Lurie et al.	:	
Application No. 10/796,875	:	DECISION ON PETITION
Filed: March 8, 2004	:	PURSUANT TO
Attorney Docket Number: 016354-	:	37 C.F.R. § 1.137(B)
005213US	:	
Title: VENTILATOR AND METHODS	:	
FOR TREATING HEAD TRAUMA AND	:	
LOW BLOOD CIRCULATION	:	

This is a decision on the petition filed November 12, 2007, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

This petition is **DISMISSED**.

BACKGROUND AND PROCEDURAL HISTORY

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR § 1.113 in a timely manner to the final Office action mailed April 21, 2006, which set a shortened statutory period for reply of three months. An after-final amendment was received on June 21, 2006, and an advisory action was mailed on October 11, 2006. A second after-final response (two terminal disclaimers) was submitted on October 19, 2006, along with a three-month extension of time, and a second advisory action was mailed on June 14, 2007. No further responses were received, and no additional extensions of time

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under the provisions of 37 CFR § 1.136(a) were available. Accordingly, the above-identified application became abandoned on October 22, 2006. A notice of abandonment was mailed on August 6, 2007.

A petition pursuant to 37 C.F.R. § 1.137(a) was filed on September 10, 2007, and was dismissed in a decision mailed on October 31, 2007.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

ANALYSIS

37 C.F.R. § 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. Since the statement contained in this petition varies from the language required by 37 C.F.R. § 1.137(b)(3), the statement contained in this petition is being construed as the statement required by 37 C.F.R. § 1.137(b)(3) and Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.

With this petition, Petitioner has included the petition fee and a statement that is being construed as the proper statement of unintentional delay. Requirements (2) and (3) of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.

Regarding the first requirement of Rule 1.137(b), the requirement has not been satisfied because Petitioner did not submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.¹ In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. § 1.137(b)(1) (i.e., a Notice of Appeal (and fee required by law); an amendment that *prima facie* places the application in condition for allowance; a continuing application under 37 C.F.R. §1.53(b); a request for continuing examination under 37 C.F.R. §1.114, if applicable; or a 37 C.F.R. §1.129(a) submission, if applicable). The petition was not accompanied by any of these replies.

CONCLUSION

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail,² hand-delivery,³ or facsimile.⁴ Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.⁵

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.⁶ All other inquiries

¹ See MPEP § 711.03(c).

² Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

³ Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

⁴ (571) 273-8300- please note this is a central facsimile number.

⁵ <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

⁶ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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concerning examination procedures should be directed to the
Technology Center.

/Paul Shanowski/

Paul Shanowski

Senior Attorney

Office of Petitions
